

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

CHARLES KYLE GOETTING,

Defendant and Appellant.

A162952

(Alameda County  
Super. Ct. No. 466839)

Defendant appeals his conviction for premeditated attempted murder of a police officer, contending that the evidence was insufficient for the jury to find that he had the specific intent to kill and that he acted with premeditation and deliberation. We affirm.

**BACKGROUND**

Defendant was charged by information with the murder of Jason Anderson (Pen. Code<sup>1</sup>, § 187, subd. (a), count one); attempted premeditated murder of a police officer, Officer Timothy Eads (§§ 664/187, subd. (a), count two); assault of a police officer with a semiautomatic firearm (§ 245, subd. (d)(2),

---

<sup>1</sup> All further statutory references are to the Penal Code unless otherwise specified.

count three); and one count of possession of a firearm by a felon (§ 29800, subd. (a)(1), count five). With respect to the murder, attempted murder, and assault charges, the information alleged that defendant personally and intentionally discharged a firearm and that his discharge of a firearm inflicted great bodily injury (§§ 12022.7, subd. (a); 12022.53, subds. (b), (c), (d), and (g); 12022.5, subd. (a)).

### ***The Prosecution's Case***

On December 25, 2015, at about 9:30 a.m., BART Officer Carlos Dazhan observed defendant standing with a gas can by the gas tank of a U-Haul truck on the bottom level of a BART station parking structure. Officer Dazhan asked defendant what he was doing, and defendant said that the truck ran out of gas. Officer Dazhan subsequently observed defendant pushing the truck to another spot in the parking structure. Defendant then told Officer Dazhan that he was parking the truck. At that point, Officer Dazhan drove behind the truck and noticed the back window was shattered. He ran a record check on the license plate, and he requested additional officer assistance. About twenty minutes later, Officer Eads responded.

The two officers drove into the parking structure where the truck was parked and ran a record check with the U-Haul truck's VIN number. The officers saw defendant outside of the parking structure. Officer Dazhan approached defendant and asked him to whom the truck belonged. Defendant replied that it belonged to a friend whose name he did not know. When asked how the

truck's window was broken, defendant said that some kids threw a rock.

Officer Dazhan inquired if defendant was on probation and subject to a search clause. Based on defendant's probation search condition, Dazhan told defendant he was going to conduct a search and ordered defendant to place his hands behind his head. When defendant did not comply, Officer Dazhan ordered defendant to put his hands behind his head again, and, believing that defendant intended to run, Officer Dazhan grabbed defendant's sweatshirt. A second later, Officer Dazhan heard Officer Eads scream, "Gun." Officer Eads ran behind an electrical box to take cover.

Officer Dazhan heard multiple gunshots and began to tackle defendant, who was larger than Officer Dazhan. Officer Dazhan continued to hear gunshots as he and defendant went to the ground. Defendant landed on his stomach, with Dazhan on top of him, and Officer Dazhan attempted to hold him down. Defendant resisted and bucked upward, and Officer Dazhan shot defendant in the back. Although defendant continued to resist, Officers Dazhan and Eads were able to handcuff him. Officer Eads said he had been shot, and Officer Dazhan requested medical assistance. Footage of the incident from Officer Dazhan's body camera was played for the jury.

Officer Eads testified that he responded to Officer Dazhan's request for cover. When the two officers encountered defendant, Officer Dazhan addressed him, and Officer Eads stayed to the side of defendant, approximately six feet away. Officer Eads was

wearing a body camera and turned it on as they made contact with defendant. Officer Eads's body camera footage was played for the jury. When Officer Dazhan told defendant that he intended to search him and asked defendant to raise his hands above his head, defendant did not comply and instead reached under his coat. Officer Eads moved toward defendant to get him to comply, and, from approximately three to four feet away, he saw a gun handle under defendant's sweatshirt on his waistband. Officer Eads yelled, "Gun." He attempted to get out of the line of fire, moving for cover behind an electrical box. After hearing at least one shot, Officer Eads felt a bullet hit his arm. He suffered one gunshot wound that entered his body in the rear side of his arm, near his triceps, and exited his body through the front of his arm.

A Springfield XD 9mm firearm was located on the sidewalk at the scene of the incident, and five 9mm casings were also found on the sidewalk. Strike marks from fired bullets were located on the electrical box behind which Officer Eads took cover and on a sign next to the electrical box. In the bed of the U-Haul truck, officers found the body of Jason Anderson wrapped in a tarp, along with a pickaxe and shovel, and gas cans.

Jennifer Carter testified that, on December 18, 2015, someone she knew as "40" asked her to rent a U-Haul. She did so, gave him the keys to the vehicle, and never saw him again.

Forensic pathologist Dr. Tom Rogers conducted an autopsy on Jason Anderson. He observed a gunshot wound in Anderson's neck, removed a bullet from Anderson, and determined that

Anderson's cause of death was one gunshot wound to the neck, with the bullet having traveled forward to the lower part of Anderson's head. The deformed bullet was taken from Anderson during the autopsy.

Firearm examination, identification, and comparison expert Cary Wong was asked to test fire the Springfield XD 9mm firearm recovered from the scene and compare test-fired bullets and cartridge casings to the casings and bullets recovered. All five casings and the deformed bullet that were recovered matched the test fired bullets and casings. Wong opined that the deformed bullet taken from Jason Anderson's neck was also fired from the Springfield XD recovered at the scene. Wong further testified that the Springfield XD has a safety on the trigger that the shooter must depress to fire the gun, and the gun contains a second safety on its grip that the shooter also must depress to fire the gun.

The prosecution and defense stipulated that defendant had a prior conviction for possession for sale of a controlled substance.

### ***The Defense Case***

Defendant testified that he moved out of his parents' home when he was 15 or 16, and he stayed with friends, including Jason Anderson, who was his best friend. Defendant testified that he was a drug addict who began using methamphetamine and heroin when he was 15. He and Anderson used drugs together every day.

When defendant was 18 years old, he was sitting in a car when someone shot him in the shoulder, making him more “paranoid” and “sketched out.”

A few days before the shooting at issue in this case, after being chased by two men with baseball bats, defendant obtained a gun for self-protection. He knew he had prior conviction prohibiting him from possessing a gun.

Defendant asked Jennifer Carter to rent a truck for him at Anderson’s request because Anderson needed to tow a car. Defendant left the truck with Anderson at Anderson’s ex-wife’s house. Five days later, defendant met up with Anderson. Anderson had been going through a hard time and had no money or place to live. He seemed desperate, and he told defendant that he wanted to do some robberies to get cash. Defendant was using methamphetamine, and Anderson was using heroin and methamphetamine. Both defendant and Anderson had a gun. They stopped at a number of potential robbery locations, but defendant told Anderson there were too many people around and cameras. Anderson got angry and kept saying he needed money. He eventually “snapped,” drove crazily to a house, grabbed his backpack, and ran into the house.

Twenty to thirty minutes later, Anderson came out of the house with his backpack, and the two drove back to his ex-wife’s house. They had been out all night and had not slept, and they drove off in the U-Haul truck. While driving, Anderson asked defendant for more heroin. He said he was feeling sick and was going through withdrawal, but defendant did not believe him and

said he did not have any more heroin. Anderson told defendant that he was going to “fuck” him up, and he pulled the truck over.

Anderson got out of the truck and came at defendant with a pistol in his hand. He aimed the gun at defendant’s head and demanded that defendant give him everything he had.

Defendant refused, and Anderson hit him on his head with the gun. They started fighting, and defendant shot Anderson while Anderson was over him. Anderson fell to the ground.

Realizing Anderson was dead, defendant panicked, put Anderson’s body in the truck, and picked up both guns. At that point, he realized that Anderson’s gun was a BB gun. Defendant drove away in the U-Haul truck, and at some point, he saw a tarp, pickaxe, shovel, and sandbags. He used the tarp to cover Anderson’s body and continued to drive. After driving around and panicking when he encountered a police car, defendant eventually ran out of gas, pulled into a garage, and pushed the truck into a parking spot. He encountered an officer in the garage and tried to leave, but the truck died.

Outside the garage, defendant offered a man heroin to get him gas. As he was standing outside, two police officers approached him. He told them his name, but spelled it incorrectly and gave them an incorrect birthdate. He was scared to give his real name. Defendant conceded that he pulled out and fired his gun, but he stated he never thought about firing it. He said it was hard for him to believe he did it, he grabbed his gun “on impulse,” and he had no intent to kill anyone.

On cross-examination, defendant conceded that he intentionally shot Anderson, and that he fired the same gun five times at the BART officer. He could not explain how Anderson was wounded in the back of the neck, when defendant testified that he was facing Anderson when he shot him. Defendant admitted that he did not go to police because it would be hard to explain why he had Anderson's dead body with a bullet in his back wrapped up in the back of his truck with a shovel and pickaxe.

Defendant admitted that he was afraid of the BART officers finding the body, of being arrested, and of spending the rest of his life in prison. He confirmed that he was willing to do anything he could to avoid arrest. He did not want to spend his life in prison, and he knew that what the officers would find in the U-Haul did not look good for him. He also knew that when the officers asked him to put his hands up, he would be searched, the officers would find the gun he carried, and they would arrest him. Once the officers arrested him, he knew they would look in the truck and find the body. Defendant said he thought he could talk his way out of the situation until he was told to turn around. At that point, as the officer grabbed him, he pulled out his gun. He conceded the body cam video showed him aiming at Officer Eads.

Neuropsychologist Dr. Evered testified to the effect of fear, stress, and life-threatening situations as they relate to human perception, as well as the effects of stimulant use and abuse on the human brain. Dr. Evered had never met with defendant. Dr. Evered opined that a person is not conscious of what he or she is



doing when in a heightened fear response, nor is a person able to judge or plan. The person simply acts on reflex, and this is especially true if the individual has experienced prior trauma that is retriggered. In this mode, it is common for one who fires a gun to have trouble recounting the details of the shooting. Dr. Evered also testified that use of methamphetamine triggers insomnia and both impair the pre-frontal cortex part of the brain that is responsible for planning and reflection.

The jury found defendant guilty of premeditated attempted murder of a police officer, assault of police officer, and possession of a firearm, and found the discharge of a firearm allegations true. The jury deadlocked as to the murder charge, and it found the discharge of a firearm inflicting great bodily injury allegation not true. Pursuant to a plea agreement, defendant then entered a no contest plea to the murder charge, which was amended to charge second degree murder. The enhancement allegations attached to the murder charge were dismissed.

The trial court sentenced defendant to an indeterminate prison sentence of 35 years to life and a determinate prison sentence of 8 months calculated as follows: 15 years to life for the attempted murder charge, enhanced with an additional consecutive 20 years to life pursuant to section 12022.53, subdivision (c), and a consecutive sentence of 8 months for the felon in possession of a firearm conviction. The court stayed the sentence on the assault charge pursuant to section 654. For the murder conviction, the court sentenced defendant to 15 years to

life to be served concurrently with the sentence imposed for the attempted murder conviction. Defendant timely appealed.

### DISCUSSION

Defendant argues that the evidence was insufficient to establish that he harbored the specific intent to kill Officer Eads, and that he acted with premeditation and deliberation. We disagree.

The standard of review is well-settled. “To assess the evidence’s sufficiency, we review the whole record to determine whether any rational trier of fact could have found the essential elements of the crime . . . beyond a reasonable doubt. . . . In applying this test, we review the evidence in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the [trier of fact] could reasonably have deduced from the evidence. [Citation.] ‘Conflicts and even testimony [that] is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends.’ ” (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.) It is well-settled that “[a] reversal for insufficient evidence “is unwarranted unless it appears ‘that upon no hypothesis whatever is there sufficient substantial evidence to support’ ” the jury’s verdict.’ ” (*People v. Penunuri* (2018) 5 Cal.5th 126, 142; see also *People v. Zamudio*, p. 357.)

“Attempted murder requires the specific intent to kill and the commission of a direct but ineffectual act toward

accomplishing the intended killing.” (*People v. Lee* (2003) 31 Cal.4th 613, 623.) Because there is rarely direct evidence of specific intent, it must usually be shown from the circumstances of the crime. (*People v. Lashley* (1991) 1 Cal.App.4th 938, 945–946 (*Lashley*)). That an attempt was unsuccessful does not establish a defendant acted without intent to kill. (*People v. Smith* (2005) 37 Cal.4th 733, 742.) Whether a defendant possessed the requisite intent to kill is, of course, a question for the trier of fact. While reasonable minds may differ on the resolution of that issue, our sole function is to determine if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. (*Jackson v. Virginia* (1979) 443 U.S. 307, 319.)

The crime of attempted premeditated murder requires proof that the defendant acted with deliberation and premeditation. (§§ 189 & 664, subd. (a).) “ ‘ ‘ ‘In this context, “premeditated” means “considered beforehand,” and “deliberate” means “formed or arrived at or determined upon as a result of careful thought and weighing of considerations for and against the proposed course of action.” ’ ’ ’ [Citation.] ‘ “An intentional killing is premeditated and deliberate if it occurred as the result of preexisting thought and reflection rather than unconsidered or rash impulse.” ’ [Citations.] “The true test is not the duration of time as much as it is the extent of the reflection. Thoughts may follow each other with great rapidity and cold, calculated judgment may be arrived at quickly.” ’ ’ ’ (*People v. Morales* (2020) 10 Cal.5th 76, 88.)

“In *People v. Anderson* [1968] 70 Cal.2d [15,] 26 (*Anderson*), we identified ‘three basic categories’ of evidence this court has generally found sufficient to sustain a finding of premeditation and deliberation: (1) planning activity, or ‘facts about how and what defendant did prior to the actual killing which show that the defendant was engaged in activity directed toward, and explicable as intended to result in, the killing’; (2) motive, or ‘facts about the defendant’s prior relationship and/or conduct with the victim from which the jury could reasonably infer a “motive” to kill the victim’; and (3) manner of killing, or ‘facts about the nature of the killing from which the jury could infer that the manner of killing was so particular and exacting that the defendant must have intentionally killed according to a “preconceived design” to take his victim’s life in a particular way for a “reason”. . . .’ ” (*People v. Morales, supra*, 10 Cal.5th at pp. 88–89, italics removed.) “In the years since *Anderson*, ‘ “we have emphasized that its guidelines are descriptive and neither normative nor exhaustive, and that reviewing courts need not accord them any particular weight.” ’ [Citation.] *Anderson* provides ‘a framework to aid in appellate review,’ but it does not ‘define the elements of first degree murder or alter the substantive law of murder in any way.’ ” (*Id.* at p. 89.)

Here, the jury had sufficient evidence to find that defendant acted with the requisite intent to kill. To begin, defendant’s act of firing his weapon multiple times toward a victim at a close range “in a manner that could have inflicted a mortal wound had the bullet been on target is sufficient to

support an inference of intent to kill . . . .” (*Lashley, supra*, 1 Cal.App.4th at p. 945.) Defendant shot in Officer Eads’s direction five times from a short distance away, striking Officer Eads, the electrical box that Officer Eads ran to and hid behind for cover, and a sign in Officer Eads’s vicinity. Prior thereto, defendant had used the same gun to kill Anderson, so he was aware of the lethal nature of firing his weapon. Defendant points out that only one of his bullets hit Officer Eads and only in the upper right hand. Officer Eads’s testimony in fact suggests he was shot in his upper right arm rather than hand, but, in any event, “the fact that the victim may have escaped death because of the shooter’s poor marksmanship” does not necessarily establish that the defendant lacked the specific intent to kill. (*Lashley*, at p. 945.) The jury was free to reject, as it necessarily did, defendant’s self-serving testimony that he never intended to kill anyone when he shot. The record contains sufficient evidence from which a reasonable jury could infer specific intent to kill.

As for premeditation and deliberation, citing *Anderson*, defendant argues that the evidence was insufficient because there was no evidence of planning. The Attorney General counters that there was at least some evidence of all three factors, and, despite the fact that defendant did not initiate the encounter with Officers Eads and Dazhan, the jury could have reasonably found that defendant premeditated and deliberated on the attempted killing as he was detained. We conclude there was sufficient evidence to sustain the conviction.

There was substantial evidence of defendant's motive to kill Officer Eads so that he could escape. Defendant had shot Anderson, Anderson's body was in the back of the U-Haul truck, and defendant was about to be searched while carrying a prohibited firearm that was used to kill Anderson. Defendant conceded that he had clear thoughts fearing police discovery of Anderson's body and spending his life in prison. It was reasonable for the jury to infer that defendant would do whatever he needed to do to avoid apprehension by police. As for the manner of the attempted killing, defendant reached for his gun, consciously depressing two safeties to fire, and, from a short distance away, fired five shots toward Officer Eads when Eads was running for cover and did not have his gun out. Defendant conceded that body cam video showed he was aiming at Officer Eads. Furthermore, at least twenty minutes passed between defendant's first encounters with Officer Dazhan and his last encounter, and then four to five minutes went by while Officer Dazhan questioned defendant during the last encounter, during which defendant admittedly gave false answers to avoid being caught. The jury could have inferred that during this time, defendant formed a plan to escape that included killing officers if necessary. (See *People v. Brady* (2010) 50 Cal.4th 547, 563–564 [rational juror could conclude defendant, knowing he illegally possessed a firearm, rapidly and coldly formed idea to use his firearm before officer became aware of its existence where defendant shot the officer a few minutes after he shined his patrol vehicle's spotlight on defendant's car].) Again, the jury

was free to reject defendant's testimony that he had no "clear thoughts" and merely reacted.

Finally, we reject defendant's passing suggestion that instructional error occurred because the jury was instructed on implied malice. The court properly gave the implied malice instruction for the murder count, not for the attempted murder count.

### **DISPOSTION**

The judgment is affirmed.

BROWN, J.

WE CONCUR:

POLLAK, P. J.  
STREETER, J.

*People v. Goetting* (A162952)